

806 KAR 17:320. Kentucky Access requirements.

RELATES TO: KRS 304.2-310, 304.9-020(1), 304.17-042, 304.17-070, 304.17A-005(26), 304.17A-140, 304.17A-200(8), 304.17A-230(2), 304.17A-243, 304.17A-245, 304.17B-001-304.17B-033, 304.18-110

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17B-031(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner to make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.17B-031(1) requires the department to promulgate administrative regulations necessary to carry out the provisions of KRS 304.17B regarding Kentucky Access. This administrative regulation establishes eligibility, application process, effective dates of coverage, and premium payment requirements for Kentucky Access.

Section 1. Definitions. (1) "Adverse decision" means a decision the enrollee finds unfavorable that is not a coverage denial or adverse determination and that is reviewable by the department.

(2) "Agent" is defined in KRS 304.9-020(1).

(3) "COBRA" is defined in KRS 304.17A-005(7).

(4) "Creditable coverage" is defined in KRS 304.17A-005(8).

(5) "Department" means the Department of Insurance.

(6) "Eligible individual" is defined in KRS 304.17A-005(11).

(7) "Enrollee" is defined in KRS 304.17B-001(9).

(8) "Future effective date" means a date no earlier than the first day of the month following the month of application and no later than a date three (3) months after the month of application.

(9) "Government" means any political unit, including local, city, county, state, and federal authority.

(10) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17B-001(11).

(11) "Guaranteed Acceptance Program qualified individual" is defined in KRS 304.17A-005(20).

(12) "Insurer" is defined in KRS 304.17A-005(27).

(13) "Kentucky Access" is defined in KRS 304.17B-001(17).

(14) "Month of application" means the earlier of:

(a) The month in which the date of receipt is logged by the third-party administrator for the application; or

(b) The month of the postmark date, if the application has a postmark date, before the last three (3) days of the month prior to its receipt.

(15) "Substantially similar coverage" means individual coverage that:

(a) Meets the definition of a health benefit plan as defined in KRS 304.17A-005(22);

(b) Includes a deductible that is the same as or higher than the deductible in the policy for which the applicant is applying; and

(c) Does not include policy limits that are more restrictive than the policy for which the applicant is applying.

(16) "Third-party administrator" means the administrator selected by the department pursuant to KRS 304.17B-011(1) to administer Kentucky Access.

Section 2. Application Process. (1) An individual applying for Kentucky Access shall submit to the third-party administrator:

- (a) A completed:
 - 1. Application form KA-1;
 - 2. Section III of application form KA-1 if the individual is applying for dependent coverage when the initial application for coverage is submitted; and
 - 3. Application form KA-2 if the individual is applying for dependent coverage after the enrollee is enrolled in Kentucky Access;
- (b) Documentation as required by Section 4 of this administrative regulation; and
- (c) Premium payment for at least:
 - 1. Two (2) months if selecting a monthly payment option;
 - 2. Three (3) months if selecting a quarterly payment option;
 - 3. Six (6) months if selecting a semi-annual payment option; or
 - 4. Twelve (12) months if selecting an annual payment option.
- (2) Application processing for a paper application shall be performed as follows:
 - (a) Upon receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process the application in order of receipt.
 - (b) If the premium required by subsection (1)(c) of this section is not received with the application, the third-party administrator:
 - 1. Shall not consider the application;
 - 2. Shall return the application to the applicant; and
 - 3. Initiate the process for refund of premium, if necessary.
 - (c) If the premium required by subsection (1)(c) of this section is received with the application, the third-party administrator shall review the application to determine if:
 - 1. All sections of the application are completed, if necessary; and
 - 2. All documentation required by Section 4 of this administrative regulation has been submitted.
 - (d) If an application is complete pursuant to subsection (2)(c) of this section, the third-party administrator shall:
 - 1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015; and
 - b. Verify that the check for payment of the premium is paid by the applicant's bank by:
 - (i) Waiting three (3) business days; or
 - (ii) Receiving documentation from the bank that the check has cleared; and
 - 2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.
 - (e) If an application is not complete, the third-party administrator shall:
 - 1. Pend the application; and
 - 2. Notify the applicant in writing, within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:
 - a. Identify the missing information needed to complete the application; and
 - b. Give the applicant thirty (30) days to provide the information.
 - (f) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:
 - 1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015; and
 - b. Verify that the check for payment of the premium is paid by the applicant's bank by:
 - (i) Waiting three (3) business days; or
 - (ii) Receiving documentation from the bank that the check has cleared; and
 - 2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(g) If an applicant provides incomplete or insufficient information within fifteen (15) days of the date of the notification of missing information, the third-party administrator shall:

1. Return the application to a pending status; and
2. Notify the applicant in writing, within five (5) business days of receipt of the incomplete or insufficient information, that the application continues to be incomplete. The written notification shall:

- a. Identify the information needed to complete the application; and
- b. Give the applicant ten (10) days to provide the information.

(h) If an applicant fails to provide the information within thirty (30) days or within the timeframe in paragraph (g)2b of this subsection, the third-party administrator shall:

1. Determine the applicant ineligible;
2. Send written notice of the determination of ineligibility within five (5) business days of the end of the allowed thirty (30) days, which shall include:
 - a. The reason for ineligibility; and
 - b. The right to appeal the determination in accordance with Section 7 of this administrative regulation; and
3. Initiate the process for refund of premium, if necessary.

(3) Application processing for a faxed or an electronic application shall be performed as follows:

(a) Upon receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process applications in order of their receipt.

(b) If the premium required by subsection 1(c) of this section is not received within three (3) business days or postmarked more than three (3) business days from the date the application is electronically submitted or faxed, the third-party administrator shall:

1. Not consider the application;
2. Return the application to the applicant; and
3. Initiate the process for refund of premium, if necessary.

(c) If premium is postmarked three (3) business days or less from the date the application is electronically submitted or faxed, the third-party administrator shall review the application to determine if:

1. All sections of the application are completed, if necessary; and
2. All documentation required by Section 4 of this administrative regulation has been submitted.

(d) If an application is complete pursuant to subsection (3)(c) of this section, the third-party administrator shall:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

- (i) Waiting three (3) business days; or
- (ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(e) If an application is not complete pursuant to subsection (3)(c) of this section, the third-party administrator shall:

1. Pend the application; and
2. Notify the applicant in writing, within five (5) business days of receipt of the application, that the application is incomplete. The written notification shall:
 - a. Identify the missing information needed to complete the application; and
 - b. Give the applicant thirty (30) days to provide the information.

(f) If an applicant provides incomplete or insufficient information within fifteen (15) days of the date of the notification of missing information, the third-party administrator shall:

1. Return the application to a pending status; and
2. Notify the applicant in writing, within five (5) business days of receipt of the incomplete or insufficient information, that the application continues to be incomplete. The written notification shall:

- a. Identify the information needed to complete the application; and
- b. Give the applicant ten (10) days to provide the information.

(g) If an applicant provides the information within thirty (30) days, the third-party administrator shall, within five (5) business days of receipt of the information:

1.a. Verify that the premium is from a permitted source in accordance with KRS 304.17B-015; and

b. Verify that the check for payment of the premium is paid by the applicant's bank by:

- (i) Waiting three (3) business days; or
- (ii) Receiving documentation from the bank that the check has cleared; and

2. On the next business day after premium has been verified, determine if the applicant is eligible for Kentucky Access coverage.

(h) If an applicant fails to provide the information within thirty (30) days, the third-party administrator shall determine the applicant ineligible and send written notice of the determination of ineligibility within five (5) business days of the end of the allowed thirty (30) days, which shall include:

1. The reason for ineligibility; and
2. The right to appeal the determination in accordance with Section 7 of this administrative regulation.

(4) A determination of ineligibility in accordance with subsection 2(g) or subsection 3(g) of this subsection shall not preclude the applicant from filing a new application for Kentucky Access.

(5) Upon a determination of eligibility, the third-party administrator shall send to the applicant within five (5) business days:

- (a) An identification card; and
- (b) A health benefit plan coverage document.

(6) Upon a determination of ineligibility, the third-party administrator shall send to the applicant, within three (3) business days of the determination, a letter of notification of:

- (a) The reason for the determination of ineligibility; and
- (b) Right to appeal the determination in accordance with Section 7 of this administrative regulation.

Section 3. Effective Date of Coverage. (1)(a) Unless a future effective date is requested by an applicant and granted in accordance with subsection (1)(b) of this section, coverage for Kentucky Access shall be effective the first day of the month following the month of application in accordance with KRS 304.17B-019(5).

(b) Kentucky Access shall grant a future effective date, upon request, for an applicant whose prior coverage will terminate within three (3) months of the month of application. The effective date of Kentucky Access coverage shall be the first day after the applicant's prior coverage terminates.

(2) If a determination of ineligibility is overturned on appeal pursuant to Section 7 of this administrative regulation, coverage for Kentucky Access shall be effective in accordance with subsection (1) of this section.

(3) A dependent child added to an enrollee's plan shall have coverage under Kentucky Ac-

cess, beginning:

(a) From moment of birth for a newborn child of an otherwise eligible Kentucky Access enrollee, in accordance with KRS 307.17-042;

(b) On the date of filing of a petition for adoption of a child, in accordance with KRS 304.17A-140;

(c) On the date of filing an application for appointment as a court-appointed custodial guardian of a minor child, in accordance with KRS 304.17A-140; or

(d) On the first day of the month following the month of application to add to Kentucky Access a dependent child not described in paragraph (a), (b), or (c) of this subsection.

(4) A dependent spouse added to an enrollee's plan within thirty-one (31) days of a qualifying event shall have coverage under Kentucky Access beginning on the date of the qualifying event.

Section 4. Proof of Eligibility. (1) An individual shall demonstrate eligibility by providing the following to the third-party administrator in accordance with Section 2 of this administrative regulation:

(a) An eligible individual who is qualifying pursuant to KRS 304.17B-015(1) shall submit documentation of at least eighteen (18) months of prior countable, creditable coverage provided by one (1) or more previous insurers or employers and documentation that the most recent coverage was group, governmental, or church plan coverage.

(b) An individual who is qualifying pursuant to KRS 304.17B-015(2) shall submit one (1) of the following:

1. A copy of a notice of rejection from one (1) insurer for individual health care coverage substantially similar to the Kentucky Access coverage for which the individual is applying, dated within the ninety (90) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later;

2. A copy of a notice of a premium rate for individual health care coverage offered by an insurer that exceeds the Kentucky Access premium rate for substantially-similar coverage, dated within the ninety (90) day period prior to the effective date of Kentucky Access coverage or the approval date of the application, whichever is later; or

3. Documentation from a physician dated within one (1) year preceding the effective date of Kentucky Access coverage stating the diagnosis of a high-cost condition as listed in KRS 304.17B-001(14).

(c) An individual who is qualifying as a GAP-qualified individual pursuant to KRS 304.17B-015(4)(a) shall submit documentation from the GAP participating insurer identifying the applicant as a GAP-qualified individual.

(d) An individual applying as a dependent pursuant to KRS 304.17B-015(4)(a) or Section 6 of this administrative regulation shall submit the documentation required by Section 6 of this administrative regulation.

(2) Proof of current Kentucky residency, required for eligible individuals applying pursuant to KRS 304.17B-015(1), shall be established by submitting documentation which may include a copy of:

(a) A valid Kentucky driver's license;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence; or

(c) A receipt in the applicant's name for dwelling expenses in Kentucky, which shall be dated within the most recent three (3) months before the date of application for Kentucky Access. This receipt may be for one (1) of the following payments:

1. Mortgage;

2. Rent; or
3. Utility bill.

(3) Proof of twelve (12) month Kentucky residency, required for individuals applying pursuant to KRS 304.17B-015(2) shall be established by submitting documentation which may include a copy of:

(a) A valid driver's license, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence, dated twelve (12) months or more prior to the date of application for Kentucky Access;

(c) A resident Kentucky income tax return for the most recent twelve (12) month tax period; or

(d) A receipt in the applicant's name for dwelling expenses in Kentucky dated twelve (12) months or more before the date of application for Kentucky Access for one (1) of the following payments:

1. Mortgage;
2. Rent; or
3. Utility bill.

(4) An individual who is eligible for coverage under Kentucky Access pursuant to KRS 304.17B-015(2) or (4) shall be subject to a preexisting condition exclusion for any mental or physical condition for which medical advice, diagnosis, care or treatment was recommended or received within the last six (6) month period ending on the individual's enrollment date:

(a) The exclusion time period shall not exceed a period of twelve (12) months following the enrollment date; and

(b) The exclusion shall not apply to:

1. Genetic information described as a condition in the absence of a diagnosis;
2. Domestic violence;
3. Newborn children if added to Kentucky Access within thirty-one (31) days of the date of birth; and

4. Adopted children if added to Kentucky Access on the date the child was legally placed for adoption or the date the child was legally adopted.

(5) An individual who is eligible pursuant to KRS 304.17B-015(2) or (4)(a), may submit documentation of countable, creditable coverage, if any, to reduce the preexisting condition exclusion time period as established in subsection (4) of this section by the number of months of his countable, creditable coverage.

(6) If an individual terminated or was terminated from Kentucky Access coverage within the past twelve (12) months, he may reestablish eligibility, as permitted by KRS 304.17B-015(4)(c), by submitting written documentation of a good faith reason for the termination, including:

- (a) Loss of employment;
- (b) Moving out of state and returning;
- (c) Change in family status; or
- (d) Other situations beyond the individual's control.

Section 5. Dependent Eligibility. (1) A spouse or a child may receive coverage as a dependent of an enrollee if:

(a) The spouse is a twelve (12) month resident of Kentucky;

(b) The spouse is a current resident of Kentucky and is an eligible individual pursuant to KRS 304.17B-015(1); or

- (c) The child is a current resident of Kentucky.
- (2) A child shall be an eligible dependent if he is:
 - (a) Under the age of twenty-six (26); or
 - (b) A child of any age who is:
 - 1. Incapable of self-sustaining employment by reason of mental or physical disability; and
 - 2. Chiefly dependent upon the enrollee for support.
- (3) Documentation of dependent eligibility shall be submitted by the enrollee to the third-party administrator by the applicant when applying for coverage and as specified in subsection (3)(a) through (c) of this section.
 - (a) For eligibility pursuant to subsection (2)(a) of this section federal or state income tax records for the most recent twelve (12) month tax period, submitted annually.
 - (b) For eligibility pursuant to subsection (2)(b) of this section:
 - 1. Federal or state income tax records for the most recent twelve (12) month tax period, submitted annually; and
 - 2. Letter of determination of disability from the Social Security Administration.
 - (4) An enrollee shall submit to the third-party administrator documentation of dependent spouse eligibility, which may include a copy of:
 - (a) A joint federal or state tax return for the most recent twelve (12) month tax period;
 - (b) A marriage certificate; or
 - (c) A signed attestation or affidavit verifying the existence of a valid marriage between the enrollee and dependent spouse.

Section 6. Appeals. (1)(a) An applicant may request a reconsideration of a determination of ineligibility within thirty (30) days of a determination of ineligibility by filing a written explanation of the basis for the request for reconsideration with the third-party administrator.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

- 1. Receipt of the request for reconsideration; or
- 2. Receipt of additional information, if requested by the third-party administrator.

(d) If the third-party administrator grants the request for reconsideration, the third-party administrator shall condition reinstatement based upon the receipt of additional premium due for the next coverage period.

(2)(a) If Kentucky Access denies, limits, or reduces coverage for a treatment, procedure, drug, or device, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination.

(b) If the third-party administrator requests additional information to make a determination on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

- 1. Receipt of the request for reconsideration; or
- 2. Receipt of additional information, if requested by the third-party administrator.

(3)(a) If Kentucky Access denies coverage based on a plan delivery rule within the health benefit plan coverage document, an enrollee may request a reconsideration of the decision, by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination.

(b) If the third-party administrator requests additional information to make a determination

on the request for reconsideration, the member shall have ten (10) business days from the date of the request to provide the additional information.

(c) The third-party administrator shall render a decision within thirty (30) days of:

1. Receipt of the request for reconsideration; or
2. Receipt of additional information, if requested by the third-party administrator.

(4) An applicant may appeal the third-party administrator's decision by filing a written request for a review by the department. Within thirty (30) days of receipt, the department shall review the applicant's appeal and make a determination.

(5) An applicant may request an administrative hearing on the department's final determination in accordance with KRS 304.2-310.

Section 7. Termination. (1) An enrollee may be terminated due to one (1) of the following:

(a) An enrollee who ceases to meet the eligibility requirements of Section 2, 4, or 5 of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period in which the thirty (30) day notice, required by KRS 304.17A-245(1), expires;

(b) An enrollee who fails to provide documentation of dependent eligibility in accordance with Section 5(3) of this administrative regulation may be terminated by the third-party administrator at the end of the coverage period during which the documentation is required; or

(c) An enrollee who fails to provide Kentucky Access with written notification of a change in resident address may be terminated by the third-party administrator at the end of the coverage period during which notification of the incorrect address is received.

(2) Coverage under Kentucky Access shall cease:

(a) On the earlier date that:

1. An enrollee gives written notice that the enrollee is no longer a resident of Kentucky; or
2. Documented evidence is received by Kentucky Access that the enrollee is no longer a resident of Kentucky;

(b) On the later date that:

1. Written notice of termination is received from the enrollee; or
2. Written future termination is requested by the enrollee;

(c) Upon the death of the enrollee;

(d) On the date the lifetime limit of KRS 304.17B-015(4)(d) is met; or

(e) If the premium amount due for the policy period is not received by the premium due date, subject to the grace period contained in KRS 304.17-070;

(f) If premiums are paid by an unauthorized party in accordance with KRS 304.17B-015(4)(f); or

(g) If the member becomes eligible for coverage under Medicaid or Medicare.

1. If a member is eligible for Medicaid or Medicare on the effective date of this administrative regulation, the member's coverage shall terminate on January 1, 2010.

2. If a member becomes eligible for Medicaid or Medicare subsequent to the effective date of this administrative regulation, the member's coverage shall terminate on the date the member becomes eligible for coverage under Medicaid or Medicare.

Section 8. Premium. (1) Premiums for Kentucky Access shall be billed by the third-party administrator by the first business day of each month for the following month's coverage.

(2) Premiums not received by the premium due date, subject to the grace period contained in KRS 304.17-070, shall result in termination of Kentucky Access coverage effective the last date through which the premium was paid in accordance with KRS 304.17A-245(2).

(3) Premiums may be paid in advance by arrangement with the third-party administrator as follows:

- (a) Monthly;
- (b) Quarterly;
- (c) Semiannually; or (d) Annually.
- (4) Premium payments shall be accepted from an authorized party, in accordance with KRS 304.17B-015(4)(f) in the following formats:
 - (a) Paper check;
 - (b) On-line banking payment; or
 - (c) Electronic funds transfer arranged in advance with the third-party administrator.
- (5) Premium amounts for any dependent added to Kentucky Access shall be prorated based on the effective date of coverage.
- (6) Premium amounts for coverage issued by Kentucky Access are reviewed and are subject to change by the department on an annual basis pursuant to KRS 304.17B-013.
 - (a) A new enrollee shall be charged the premium rate(s) in force on his effective date of coverage.
 - (b) An established enrollee shall be charged the premium rate(s) in force on each renewal date.

Section 9. Nonduplication of Benefits. (1) Pursuant to KRS 304.17B-019(9), Kentucky Access shall be the payor of last resort whenever any other benefit or source of third-party payment is payable. Benefits otherwise payable under Kentucky Access shall be reduced by all amounts paid or payable through:

- (a) Other health insurance; or
- (b) Hospitalization and medical expense benefits covered under:
 - 1. Workers' compensation coverage;
 - 2. Automobile medical payment or liability insurance; or
 - 3. Any state or federal law or program.
- (2) Pursuant to KRS 304.17B-007(3), the department shall have a cause of action against an enrollee for the recovery of the amount of benefits paid by Kentucky Access that are not for covered expenses.

Section 10. General Provisions. Information required to be submitted pursuant to Sections 2 and 6 of this administrative regulation shall be considered received in a timely manner if it is postmarked three (3) or more business days before the date the required information is due.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application form KA-1", 10/2010; and
- (b) "Application form KA-2", 7/2010.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department Web site at <http://insurance.ky.gov>. (28 Ky.R. 199; eff. 9-10-2001; 29 Ky.R. 1385; 1805; eff. 1-16-2003; 32 Ky.R. 1340; 1625; eff. 3-31-06; 36 Ky.R. 474; 797; eff. 11-6-09; 37 Ky.R. 816; Am. 1494; eff. 2-4-2011.)